IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5045 OF 1990

1. Shri Ananda Rama Shirtavale,
. Shri Maruti Ananda Shirtavale,
2. Shri Jagannath Sadu Shirtavale,
3. Shri Pandurang Mahadeo Shirtavale,
4. Shri Bandu Mahadeo Shirtavale,
All r/o Waghwadi, under Parali,
Taluka and Dist.Satara. .Petitioners

Vs

1. Sau Sushila Bhalchandra Pendase,
r/o Somawar Peth, Near "Phutaka Tale",
Satara, Dist: Satara.
2. The Sub-Divisional Officer,
Satara, .Respondents

Mr. Rajesh Datar, for the petitioners.
Mr R.A.Thorat, for respondent no.1.
Addl.Govt.Pleader for respodnent no.2.

CORAM : D.B.BHOSALE,J.
DATE : 24th September, 2004.

ORAL JUDGMENT:

1. This petition under Article 227 of the Constitution of India is directed against the judgment and order dated 6.7.1990 rendered by the Maharashtra Revenue Tribunal, Pune, in Revision Application No.MRT-NS-IX-6/89 (Tnc B- 245/89), Pune, by which the revision application filed by the petitioners-tenants has been dismissed and the order passed by the Sub Divisional Officer dated 31.7.1989 in Tenancy Appeal No.54/1981 has been affirmed. In the proceedings initiated under section 32G of the Bombay Tenancy and

Agricultural Lands Act, 1948 (for short,"the Act"), the Addl.Tahasildar, by order dated 20.5.1981, had determined price of the land to be paid by the tenant and on payment of the purchase price by them the certificate under section 32-M had also been issued in their favour.

2. The factual matrix, that would be relevant and material, in brief, is as follows.

2.1 Admittedly, the petitioners were tenants in respect of the land Survey No.83, admeasuring 6 acres and 16 Ares situated at village Parli. Respondent no.1 is landlady of the said land. One Ramchandra Ganesh Bhate was the original owner from whom respondent no.1 inherited the said land. The respondent-landlady was holding the agricultural lands at different villages, namely, Ambavade, Parali and Banghar, which were in possession of the eight tenants including the petitioners. The respondent had obtained the exemption certificate under section 88C of the Act on 31.1.1963 and she had also applied for possession of the said land under section 33B of the Act. The orders passed under section 88C and 33B of the Act were in respect of the agricultural lands in possession of all the eight tenants. The order dated 31.1.1963 by which the exemption certificate under section 88C was granted, was

challenged by only one tenant, viz. Vithu Gopal Aglawe in relation to the land Survey Nos. 193 and 194 in his possession as tenant and the said order was set aside and the decision was confirmed up to this Court. The petitioners did not challenge the order granting exemption certificate and the order of possession under section 33B. Though the certificate was obtained and the order under section 33B was passed, the respondent did not take possession of the said land from the petitioners and seems to have continued to accept "khand" paid by the petitioners to the respondent. It is against this backdrop, on 20/5/1981, an enquiry under section 32G of the Act was initiated by the Addl.Tahasildar and Agricultural Lands Tribunal, Satara in which the petitioners were declared as deemed purchasers in respect of the said land and the certificate under section 32M was issued in favour of the petitioners. That order was reversed by the Sub Divisional Officer and thereafter confirmed by the MRT which is being challenged in the instant petition.

3. I heard the learned counsel for the parties, perused the impugned orders and other material placed before me. Mr Datar, learned counsel for the petitioners, at the outset, submitted that the authorities below failed to take into consideration the effect of the order by which

the orders under section 88C and 33B were set aside in the application filed by one of the tenants, viz. Vithal Gopal Aaglawe, which shows that the requirement of the land was not bonafide. He further submitted that despite there being an order passed under section 88C and 33 B of the Act, respondent did not make any attempt to take over possession of the said land and instead continued to accept "Khand" from the petitioners which further shows that the landlady's requirement of the land for personal cultivation was not bonafide. According to Mr Datar, the order under section 33B passed in the year 1963 has become inexecutable due to efflux of time and therefore the proceedings under section 32G were rightly initiated and concluded in favour of the petitioners by the Addl.Tahasildar by his judgment and order dated 20.5.81.

4. On the other hand, Mr Thorat, learned counsel for respondent no.1, invited my attention to the provisions of section 88C and contended that the initiation of the proceedings under section 32G itself was illegal and redundant inasmuch as the provisions of section 32 to 32R do not apply the moment 88-C certificate is issued in favour of the landlord. He further invited my attention to the judgment of this Court dated 6.4.1971 in Spl.Civil Application No.1639 of 1967 (Sushila w/o

Bhalchandra Pendse Vs. Vithu Gopala Agalawe and anr) and contended that the order under section 88C cannot be taken benefit of by the present petitioners since that was confined only against Vithu Gopal Agalawe, one of the tenants who had challenged the said order and which was confirmed in the said Spl.Civil Application. He also invited my attention to the judgment of the Apex Court in Uttam Namdeo Mahale Vs. Vithal Deo and ors (1997) 6 Supreme Court Cases 73 and contended that the limitation period prescribed under general law of Limitation Act stands excluded by necessary implication where special statute governing the matters prescribes no limitation period.

5. There is no dispute that the application seeking possession under section 33B was allowed in respect of the land in question. The certificate under section 88C and the order under section 33B was passed against the eight tenants including the petitioners. Out of the eight tenants only one tenant viz. Vithu Gopala Agalawe challenged the order under section 88C and in those proceedings he succeeded upto this Court. This Court while disposing of the Spl.Civil Application filed by the respondent-landlady in paragraph 4 thereof made the following observations:

> "The Tribunal has been careful enough to point out that in the present case the certificate being void, the landlady is not entitled to resume possession under section 33B from the tenant Vithal Gapala. The Tribunal has said nothing about the recovery of the lands if any by the petitioner from the other tenants. The other tenants not having challenged the order passed by the Tenancy Mahalkari and not having remained present before the Maharahstra Revenue Tribunal, cannot claim the advantage of such a declaration made by the Maharashtra Revenue Tribunal. The Tribunal was in any event right in confirming the order passed by the District Deputy Collector."

It is clear from the aforesaid observations made by this Court that the other tenants including the present petitioners not having challenged the order passed by the Tenancy Mahalkari under section 88C and section 33B of the Act and not having remained present before the

Maharashtra Revenue Tribunal, cannot claim the advantage of such declaration made by the Maharahstra Revenue Tribunal. It is, therefore, clear that the order that was passed in the proceedings initiated by respondent-landlady cannot be taken advantage of by the petitioners to contend that the requirement of the landlady was not bonafide. Moreover, it cannot be overlooked that the petitioners did not choose to challenge the certificate under section 88C and the order of possession passed under section 33B of the Act till this date. Section 88C deals with exemption from certain provisions to lands leased by persons with the annual income not exceeding Rs.1500/-. Sub-section (1) thereof provides that save as otherwise provided by sections 33-A, 33-B and 33-C nothing in sections 32 to 32R shall apply to lands leased by any person and such land does not exceed an economic holding and the total annual income of person including the rent of such land does not exceed Rs.1500/-. Subsection (2) of section 88C provides that every person eligible to the exemption provided in subsection (1) shall make an application in the prescribed form to the Mamlatdar within whose jurisdiction all or most of the pieces of land leased by him are situate within the prescribed period for a certificate that he is entitled to such exemption. Sub-section (3) provides that on receipt of such

application, the Mamlatdar shall, after giving notice to the tenant or tenants of the land, hold inquiry and decide whether the land leased by such person is exempt under sub-section (1) from the provisions of sections 32 to 32R. Sub-section (4) provides that if the Mamlatdar decides that the land is so exempt, he shall issue a certificate in the prescribed form to such person. And sub-section (5) provides appeal against the order sub-section (3) of the Act. It is thus clear that once a certificate in the prescribed form is granted by the Mamlatdar, provisions of sections 32 to 32R would not apply, meaning thereby the tenant cannot claim any benefit of the provisions of section 32G of the Act. The proceedings under section 32G, therefore, cannot be allowed to be initiated and, therefore, the orders, if any, are passed in such proceedings they would be redundant and illegal. In view thereof in the present case the concerned authorities ought not to have either initiated or entertained the proceedings under section 32-G of the Act and decided the same in favour of the petitioners. In the result, no fault could be found in the orders passed by MRT and SDO and they rightly set aside the order dated 20.5.1981 of ALT, Satara.

6. In so far as a proposition of law urged by Mr Datar, learned counsel for the petitioners, that the long delay

has rendered the order under section 33B of the Act inexecutable due to efflux of time is concerned, it is no more resintigra and has been answered by the Apex Court in Uttam Namdeo Mahale case (supra). Paragraphs 3 and 4 of the judgment read thus;

> "3. The admitted position is that respondent no.1 is the owner of the property and earlier a notice was issued to the appellant to vacate the land in question. That order of eviction became final with the confirmation of the order by this Court in a Special leave petition. Thereafter, proceedings were initiated for execution. An objection has been raised on the ground that since more than 12 years have elapsed, the order cannot be implemented. The High Court has pointed out that under section 21 of the Mamlatdar's Court Act,1906, it has not prescribed any limitation for execution of the orders vide the Division Bench judgment of the High Court of Bombay in Balaji Bi Khanduji Patil V Kushaba Bin Ramji Patil.(1906) 8

Bom LR 218:ILR (1906) 30 Bom 415.

4. Mr.Bhasme, learned counsel for the appellant, contends that in the absence of fixation of the rule of limitation, the power can be exercised within a reasonable time and in the absence of such prescription of limitation, the power to enforce the order is vitiated by error of law. He places reliance on the decisions in State of Gujarat V.Patil Raghav Nathu (1969) 2 SCC 187: (1970) I SCR 335; Ram Chand V. Unio of India (1994) 1 SCC 44 and Mohd Kavi Mohamad Amin V. Fatmabai Ibrahim (1997) 5 SCC 71. We find no force in the contention. It is seen that the order of ejectment against the applicant has become final. Section 21 of the Mamlatdar's Court Act does not prescribe any limitation within which the order needs to be executed. In the absence of any specific limitation provided thereunder, necessary implication is that the general law of limitation provided in the Limitation act (Act 2 of

> 1963) stands excluded. The Division Bench, therefore, has rightly held that no limitation has been prescribed and it can be executed at any time, especially when the law of limitation for the purpose of this appeal is not there. Where there is statutory rule operating in the field, the implied power of exercise of the right within reasonable limitation does not arise. The cited decisions deal with that area and bear no relevance to the facts."

7. Section 21 of the Mamlatdars Court Act does not prescribe any limitation within which the order needs to be executed and in the absence of any specific limitation provided thereunder, necessary implication is that the general law of limitation provided under the Limitation Act stands excluded and in view thereof it is clear that no limitation has been prescribed and the order under the provisions of the Act can be executed at any time. I am informed by the learned counsel for the parties that the land in question has already been acquired under the provisions of the Land Acquisition Act and the possession thereof has also been taken by the concerned authorities long back.

9. In the circumstances, this petition fails and is dismissed as such. Rule stands discharged.

(D.B.Bhosale, J.)

HIGH COURT
CIVILI APPELLATE SIDE

WRIT PETITION NO.5045 OF 1990

Date of Judgment:

24th September, 2004

For approval and signature

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?